

4SHB 1103 - S COMM AMD

By Committee on Health & Long-Term Care

OUT OF ORDER 03/06/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** From statehood, Washington has
4 constitutionally provided for the regulation of the practice of
5 medicine and the sale of drugs and medicines. This constitutional
6 recognition of the importance of regulating health care practitioners
7 derives not from providers' financial interest in their license, but
8 from the greater need to protect the public health and safety by
9 assuring that the health care providers and medicines that society
10 relies upon meet certain standards of quality.

11 The legislature finds that the issuance of a license to practice as
12 a health care provider should be a means to promote quality and not be
13 a means to provide financial benefit for providers. Statutory and
14 administrative requirements provide sufficient due process protections
15 to prevent the unwarranted revocation of a health care provider's
16 license. While those due process protections must be maintained, there
17 is an urgent need to return to the original constitutional mandate that
18 patients be ensured quality from their health care providers. The
19 legislature has recognized and medical malpractice reforms have
20 recognized the importance of quality and patient safety through such
21 measures as a new adverse events reporting system. Reforms to the
22 health care provider licensing system is another step toward improving
23 quality in health care. Therefore, the legislature intends to increase
24 the authority of those engaged in the regulation of health care
25 providers to swiftly identify and remove health care providers who pose
26 a risk to the public.

27 **Sec. 2.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read
28 as follows:

1 (~~Unless the context clearly requires otherwise,~~) The definitions
2 in this section apply throughout this chapter unless the context
3 clearly requires otherwise.

4 (1) "Disciplining authority" means the agency, board, or commission
5 having the authority to take disciplinary action against a holder of,
6 or applicant for, a professional or business license upon a finding of
7 a violation of this chapter or a chapter specified under RCW
8 18.130.040.

9 (2) "Department" means the department of health.

10 (3) "Secretary" means the secretary of health or the secretary's
11 designee.

12 (4) "Board" means any of those boards specified in RCW 18.130.040.

13 (5) "Clinical expertise" means the proficiency or judgment that a
14 license holder in a particular profession acquires through clinical
15 experience or clinical practice and that is not possessed by a lay
16 person.

17 ~~(6)~~ (6) "Commission" means any of the commissions specified in RCW
18 18.130.040.

19 ~~((+6))~~ (7) "Unlicensed practice" means:

20 (a) Practicing a profession or operating a business identified in
21 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and
22 unsuspended license to do so; or

23 (b) Representing to a consumer, through offerings, advertisements,
24 or use of a professional title or designation, that the individual is
25 qualified to practice a profession or operate a business identified in
26 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and
27 unsuspended license to do so.

28 ~~((+7))~~ (8) "Disciplinary action" means sanctions identified in RCW
29 18.130.160.

30 ~~((+8))~~ (9) "Practice review" means an investigative audit of
31 records related to the complaint, without prior identification of
32 specific patient or consumer names, or an assessment of the conditions,
33 circumstances, and methods of the professional's practice related to
34 the complaint, to determine whether unprofessional conduct may have
35 been committed.

36 ~~((+9))~~ (10) "Health agency" means city and county health
37 departments and the department of health.

1 (~~(10)~~) (11) "License," "licensing," and "licensure" shall be
2 deemed equivalent to the terms "license," "licensing," "licensure,"
3 "certificate," "certification," and "registration" as those terms are
4 defined in RCW 18.120.020.

5 (12) "Standards of practice" means the care, skill, and learning
6 associated with the practice of a profession.

7 **Sec. 3.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read
8 as follows:

9 Except as provided in section 5 of this act, the disciplining
10 authority has the following authority:

11 (1) To adopt, amend, and rescind such rules as are deemed necessary
12 to carry out this chapter;

13 (2) To investigate all complaints or reports of unprofessional
14 conduct as defined in this chapter (~~and~~);

15 (3) To hold hearings as provided in this chapter;

16 (~~(3)~~) (4) To issue subpoenas and administer oaths in connection
17 with any investigation, consideration of an application for license,
18 hearing, or proceeding held under this chapter;

19 (~~(4)~~) (5) To take or cause depositions to be taken and use other
20 discovery procedures as needed in any investigation, hearing, or
21 proceeding held under this chapter;

22 (~~(5)~~) (6) To compel attendance of witnesses at hearings;

23 (~~(6)~~) (7) In the course of investigating a complaint or report of
24 unprofessional conduct, to conduct practice reviews and to issue
25 citations and assess fines for failure to produce documents, records,
26 or other items in accordance with section 20 of this act;

27 (~~(7)~~) (8) To take emergency action ordering summary suspension of
28 a license, or restriction or limitation of the license holder's
29 practice pending proceedings by the disciplining authority. Within
30 fourteen days of a request by the affected license holder, the
31 disciplining authority must provide a show cause hearing in accordance
32 with the requirements of section 6 of this act. Consistent with RCW
33 18.130.370, a disciplining authority shall issue a summary suspension
34 of the license or temporary practice permit of a license holder
35 prohibited from practicing a health care profession in another state,
36 federal, or foreign jurisdiction because of an act of unprofessional
37 conduct that is substantially equivalent to an act of unprofessional

1 conduct prohibited by this chapter or any of the chapters specified in
2 RCW 18.130.040. The summary suspension remains in effect until
3 proceedings by the Washington disciplining authority have been
4 completed;

5 ~~((+8))~~ (9) To conduct show cause hearings in accordance with
6 section 5 or 6 of this act to review an action taken by the
7 disciplining authority to suspend a license or restrict or limit a
8 license holder's practice pending proceedings by the disciplining
9 authority;

10 (10) To use a presiding officer as authorized in RCW 18.130.095(3)
11 or the office of administrative hearings as authorized in chapter 34.12
12 RCW to conduct hearings. The disciplining authority shall make the
13 final decision regarding disposition of the license unless the
14 disciplining authority elects to delegate in writing the final decision
15 to the presiding officer. Disciplining authorities identified in RCW
16 18.130.040(2)(b) may not delegate the final decision regarding
17 disposition of the license or imposition of sanctions to a presiding
18 officer in any case pertaining to standards of practice or where
19 clinical expertise is necessary;

20 ~~((+9))~~ (11) To use individual members of the boards to direct
21 investigations and to authorize the issuance of a citation under
22 subsection (7) of this section. However, the member of the board shall
23 not subsequently participate in the hearing of the case;

24 ~~((+10))~~ (12) To enter into contracts for professional services
25 determined to be necessary for adequate enforcement of this chapter;

26 ~~((+11))~~ (13) To contract with ~~((licensees))~~ license holders or
27 other persons or organizations to provide services necessary for the
28 monitoring and supervision of ~~((licensees))~~ license holders who are
29 placed on probation, whose professional activities are restricted, or
30 who are for any authorized purpose subject to monitoring by the
31 disciplining authority;

32 ~~((+12))~~ (14) To adopt standards of professional conduct or
33 practice;

34 ~~((+13))~~ (15) To grant or deny license applications, and in the
35 event of a finding of unprofessional conduct by an applicant or license
36 holder, to impose any sanction against a license applicant or license
37 holder provided by this chapter. After January 1, 2009, all sanctions
38 must be issued in accordance with section 12 of this act;

1 ~~((14))~~ (16) To restrict or place conditions on the practice of
2 new licensees in order to protect the public and promote the safety of
3 and confidence in the health care system;

4 (17) To designate individuals authorized to sign subpoenas and
5 statements of charges;

6 ~~((15))~~ (18) To establish panels consisting of three or more
7 members of the board to perform any duty or authority within the
8 board's jurisdiction under this chapter;

9 ~~((16))~~ (19) To review and audit the records of licensed health
10 facilities' or services' quality assurance committee decisions in which
11 a ~~(licensee's)~~ license holder's practice privilege or employment is
12 terminated or restricted. Each health facility or service shall
13 produce and make accessible to the disciplining authority the
14 appropriate records and otherwise facilitate the review and audit.
15 Information so gained shall not be subject to discovery or introduction
16 into evidence in any civil action pursuant to RCW 70.41.200(3).

17 **Sec. 4.** RCW 18.130.060 and 2006 c 99 s 1 are each amended to read
18 as follows:

19 In addition to the authority specified in RCW 18.130.050 and
20 section 5 of this act, the secretary has the following additional
21 authority:

22 (1) To employ such investigative, administrative, and clerical
23 staff as necessary for the enforcement of this chapter. The secretary
24 must, whenever practical, make primary assignments on a long-term basis
25 to foster the development and maintenance of staff expertise. To
26 ensure continuity and best practices, the secretary will regularly
27 evaluate staff assignments and workload distribution;

28 (2) Upon the request of a board or commission, to appoint pro tem
29 members to participate as members of a panel of the board or commission
30 in connection with proceedings specifically identified in the request.
31 Individuals so appointed must meet the same minimum qualifications as
32 regular members of the board or commission. Pro tem members appointed
33 for matters under this chapter are appointed for a term of no more than
34 one year. No pro tem member may serve more than four one-year terms.
35 While serving as board or commission members pro tem, persons so
36 appointed have all the powers, duties, and immunities, and are entitled
37 to the emoluments, including travel expenses in accordance with RCW

1 43.03.050 and 43.03.060, of regular members of the board or commission.
2 The chairperson of a panel shall be a regular member of the board or
3 commission appointed by the board or commission chairperson. Panels
4 have authority to act as directed by the board or commission with
5 respect to all matters (~~concerning the review, investigation, and~~
6 ~~adjudication of all complaints, allegations, charges, and matters~~)
7 subject to the jurisdiction of the board or commission and within the
8 authority of the board or commission. The authority to act through
9 panels does not restrict the authority of the board or commission to
10 act as a single body at any phase of proceedings within the board's or
11 commission's jurisdiction. Board or commission panels may (~~make~~
12 ~~interim orders and~~) issue final orders and decisions with respect to
13 matters and cases delegated to the panel by the board or commission.
14 Final decisions may be appealed as provided in chapter 34.05 RCW, the
15 administrative procedure act;

16 (3) To establish fees to be paid for witnesses, expert witnesses,
17 and consultants used in any investigation and to establish fees to
18 witnesses in any agency adjudicative proceeding as authorized by RCW
19 34.05.446;

20 (4) To conduct investigations and practice reviews at the direction
21 of the disciplining authority and to issue subpoenas, administer oaths,
22 and take depositions in the course of conducting those investigations
23 and practice reviews at the direction of the disciplining authority;

24 (5) To have the health professions regulatory program establish a
25 system to recruit potential public members, to review the
26 qualifications of such potential members, and to provide orientation to
27 those public members appointed pursuant to law by the governor or the
28 secretary to the boards and commissions specified in RCW
29 18.130.040(2)(b), and to the advisory committees and councils for
30 professions specified in RCW 18.130.040(2)(a); and

31 (6) To adopt rules, in consultation with the disciplining
32 authorities, requiring every license holder to report information
33 identified in RCW 18.130.070.

34 NEW SECTION. Sec. 5. A new section is added to chapter 18.130 RCW
35 to read as follows:

36 With regard to complaints that only allege that a license holder
37 has committed an act or acts of unprofessional conduct involving sexual

1 misconduct, the secretary shall serve as the sole disciplining
2 authority in every aspect of the disciplinary process, including
3 initiating investigations, investigating, determining the disposition
4 of the complaint, holding hearings, preparing findings of fact, issuing
5 orders or dismissals of charges as provided in RCW 18.130.110, entering
6 into stipulations permitted by RCW 18.130.172, or issuing summary
7 suspensions under section 6 of this act. The board or commission shall
8 review all cases and only refer to the secretary sexual misconduct
9 cases that do not involve clinical expertise or standard of care
10 issues.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.130 RCW
12 to read as follows:

13 (1) Upon an order of a disciplining authority to summarily suspend
14 a license, or restrict or limit a license holder's practice pursuant to
15 RCW 18.130.050 or section 5 of this act, the license holder is entitled
16 to a show cause hearing before a panel or the secretary as identified
17 in subsection (2) of this section within fourteen days of requesting a
18 show cause hearing. The license holder must request the show cause
19 hearing within twenty days of the issuance of the order. At the show
20 cause hearing, the disciplining authority has the burden of
21 demonstrating that more probable than not, the license holder poses an
22 immediate threat to the public health and safety. The license holder
23 must request a hearing regarding the statement of charges in accordance
24 with RCW 18.130.090.

25 (2)(a) In the case of a license holder who is regulated by a board
26 or commission identified in RCW 18.130.040(2)(b), the show cause
27 hearing must be held by a panel of the appropriate board or commission.

28 (b) In the case of a license holder who is regulated by the
29 secretary under RCW 18.130.040(2)(a), the show cause hearing must be
30 held by the secretary.

31 (3) At the show cause hearing, the show cause hearing panel or the
32 secretary may consider the statement of charges, the motion, and
33 documents supporting the request for summary action, the respondent's
34 answer to the statement of charges, and shall provide the license
35 holder with an opportunity to provide documentary evidence and written
36 testimony, and be represented by counsel. Prior to the show cause

1 hearing, the disciplining authority shall provide the license holder
2 with all documentation in support of the charges against the license
3 holder.

4 (4)(a) If the show cause hearing panel or health law judge
5 determines that the license holder does not pose an immediate threat to
6 the public health and safety, the panel or health law judge may
7 overturn the summary suspension or restriction order.

8 (b) If the show cause hearing panel or health law judge determines
9 that the license holder poses an immediate threat to the public health
10 and safety, the summary suspension or restriction order shall remain in
11 effect. The show cause hearing panel or health law judge may amend the
12 order as long as the amended order ensures that the license holder will
13 no longer pose an immediate threat to the public health and safety.

14 (5) Within forty-five days of the show cause hearing panel's
15 determination to sustain the summary suspension or place restrictions
16 on the license, the license holder may request a full hearing on the
17 merits of the disciplining authority's decision to suspend or restrict
18 the license. A full hearing must be provided within forty-five days of
19 receipt of the request for a hearing, unless stipulated otherwise.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 18.130 RCW
21 to read as follows:

22 (1)(a) The secretary is authorized to receive criminal history
23 record information that includes nonconviction data for any purpose
24 associated with investigation or licensing and investigate the complete
25 criminal history and pending charges of all applicants and license
26 holders.

27 (b) Dissemination or use of nonconviction data for purposes other
28 than that authorized in this section is prohibited. Disciplining
29 authorities shall restrict the use of background check results in
30 determining the individual's suitability for a license and in
31 conducting disciplinary functions.

32 (2)(a) The secretary shall establish requirements for each
33 applicant for an initial license to obtain a state background check
34 through the state patrol prior to the issuance of any license. The
35 background check may be fingerprint-based at the discretion of the
36 department.

1 (b) The secretary shall specify those situations where a background
2 check under (a) of this subsection is inadequate and an applicant for
3 an initial license must obtain an electronic fingerprint-based national
4 background check through the state patrol and federal bureau of
5 investigation. Situations where a background check is inadequate may
6 include instances where an applicant has recently lived out of state or
7 where the applicant has a criminal record in Washington. The secretary
8 shall issue a temporary practice permit to an applicant who must have
9 a national background check conducted if the background check conducted
10 under (a) of this subsection does not reveal a criminal record in
11 Washington, and if the applicant meets the provisions of RCW
12 18.130.075.

13 (3) In addition to the background check required in subsection (2)
14 of this section, an investigation may include an examination of state
15 and national criminal identification data. The disciplining authority
16 shall use the information for determining eligibility for licensure or
17 renewal. The disciplining authority may also use the information when
18 determining whether to proceed with an investigation of a report under
19 RCW 18.130.080. For a national criminal history records check, the
20 department shall require fingerprints be submitted to and searched
21 through the Washington state patrol identification and criminal history
22 section. The Washington state patrol shall forward the fingerprints to
23 the federal bureau of investigation.

24 (4) The secretary shall adopt rules to require license holders to
25 report to the disciplining authority any arrests, convictions, or other
26 determinations or findings by a law enforcement agency occurring after
27 the effective date of this section for a criminal offense. The report
28 must be made within fourteen days of the conviction.

29 (5) The secretary shall conduct an annual review of a
30 representative sample of all license holders who have previously
31 obtained a background check through the department. The selection of
32 the license holders to be reviewed must be representative of all
33 categories of license holders and geographic locations.

34 (6)(a) When deciding whether or not to issue an initial license,
35 the disciplining authority shall consider the results of any background
36 check conducted under subsection (2) of this section that reveals a
37 conviction for any criminal offense that constitutes unprofessional
38 conduct under this chapter or the chapters specified in RCW

1 18.130.040(2) or a series of arrests that when considered together
2 demonstrate a pattern of behavior that, without investigation, may pose
3 a risk to the safety of the license holder's patients.

4 (b) If the background check conducted under subsection (2) of this
5 section reveals any information related to unprofessional conduct that
6 has not been previously disclosed to the disciplining authority, the
7 disciplining authority shall take appropriate disciplinary action
8 against the license holder.

9 (7) The department shall:

10 (a) Require the applicant or license holder to submit full sets of
11 fingerprints if necessary to complete the background check;

12 (b) Require the applicant to submit any information required by the
13 state patrol; and

14 (c) Notify the applicant if their background check reveals a
15 criminal record. Only when the background check reveals a criminal
16 record will an applicant receive a notice. Upon receiving such a
17 notice, the applicant may request and the department shall provide a
18 copy of the record to the extent permitted under RCW 10.97.050,
19 including making accessible to the applicant for their personal use and
20 information any records of arrest, charges, or allegations of criminal
21 conduct or other nonconviction data pursuant to RCW 10.97.050(4).

22 (8) Criminal justice agencies shall provide the secretary with both
23 conviction and nonconviction information that the secretary requests
24 for investigations under this chapter.

25 (9) There is established a unit within the department for the
26 purpose of detection, investigation, and prosecution of any act
27 prohibited or declared unlawful under this chapter. The secretary will
28 employ supervisory, legal, and investigative personnel for the unit who
29 must be qualified by training and experience.

30 **Sec. 8.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read
31 as follows:

32 (1) (~~A person, including but not limited to consumers, licensees,~~
33 ~~corporations, organizations, health care facilities, impaired~~
34 ~~practitioner programs, or voluntary substance abuse monitoring programs~~
35 ~~approved by disciplining authorities, and state and local governmental~~
36 ~~agencies,)) (a) An individual, an impaired practitioner program, or a
37 voluntary substance abuse monitoring program approved by a disciplining~~

1 authority, may submit a written complaint to the disciplining authority
2 charging a license holder or applicant with unprofessional conduct and
3 specifying the grounds therefor or to report information to the
4 disciplining authority, or voluntary substance abuse monitoring
5 program, or an impaired practitioner program approved by the
6 disciplining authority, which indicates that the license holder may not
7 be able to practice his or her profession with reasonable skill and
8 safety to consumers as a result of a mental or physical condition.

9 (b)(i) Every license holder, corporation, organization, health care
10 facility, and state and local governmental agency that employs a
11 license holder shall report to the disciplining authority when the
12 employed license holder's services have been terminated or restricted
13 based upon a final determination that the license holder has either
14 committed an act or acts that may constitute unprofessional conduct or
15 that the license holder may not be able to practice his or her
16 profession with reasonable skill and safety to consumers as a result of
17 a mental or physical condition.

18 (ii) All reports required by (b)(i) of this subsection must be
19 submitted to the disciplining authority as soon as possible, but no
20 later than twenty days after a determination has been made. A report
21 should contain the following information, if known:

22 (A) The name, address, and telephone number of the person making
23 the report;

24 (B) The name, address, and telephone number of the license holder
25 being reported;

26 (C) The case number of any patient whose treatment is the subject
27 of the report;

28 (D) A brief description or summary of the facts that gave rise to
29 the issuance of the report, including dates of occurrences;

30 (E) If court action is involved, the name of the court in which the
31 action is filed, the date of filing, and the docket number; and

32 (F) Any further information that would aid in the evaluation of the
33 report.

34 (iii) Mandatory reports required by (b)(i) of this subsection are
35 exempt from public inspection and copying to the extent permitted under
36 chapter 42.56 RCW or to the extent that public inspection or copying of
37 the report would invade or violate a person's right to privacy as set
38 forth in RCW 42.56.050.

1 (2) If the disciplining authority determines that ((the)) a
2 complaint submitted under subsection (1) of this section merits
3 investigation, or if the disciplining authority has reason to believe,
4 without a formal complaint, that a license holder or applicant may have
5 engaged in unprofessional conduct, the disciplining authority shall
6 investigate to determine whether there has been unprofessional conduct.
7 In determining whether or not to investigate, the disciplining
8 authority shall consider any prior complaints received by the
9 disciplining authority, any prior findings of fact under RCW
10 18.130.110, any stipulations to informal disposition under RCW
11 18.130.172, and any comparable action taken by other state disciplining
12 authorities.

13 ~~((2))~~ (3) Notwithstanding subsection ((1)) (2) of this section,
14 the disciplining authority shall initiate an investigation in every
15 instance where:

16 (a) The disciplining authority receives information that a health
17 care provider has been disqualified from participating in the federal
18 medicare program, under Title XVIII of the federal social security act,
19 or the federal medicaid program, under Title XIX of the federal social
20 security act; or

21 (b) There is a pattern of complaints, arrests, or other actions
22 that may not have resulted in a formal adjudication of wrongdoing, but
23 when considered together demonstrate a pattern of similar conduct that,
24 without investigation, likely poses a risk to the safety of the license
25 holder's patients.

26 (4) Failure of a license holder to submit a mandatory report to the
27 disciplining authority under subsection (1)(b) of this section is
28 punishable by a civil penalty not to exceed five hundred dollars and
29 constitutes unprofessional conduct.

30 (5) If a report has been made by a hospital to the department under
31 RCW 70.41.210 or an ambulatory surgical facility under RCW 70.230.120,
32 a report to the disciplining authority under subsection (1)(b) of this
33 section is not required.

34 ~~((3) A person who files a complaint or reports information under~~
35 ~~this section in good faith is immune from suit in any civil action~~
36 ~~related to the filing or contents of the complaint.))~~

37 (6) A person is immune from civil liability, whether direct or

1 derivative, for providing information in good faith to the disciplining
2 authority under this section.

3 (7)(a) The secretary is authorized to receive criminal history
4 record information that includes nonconviction data for any purpose
5 associated with the investigation or licensing of persons under this
6 chapter.

7 (b) Dissemination or use of nonconviction data for purposes other
8 than that authorized in this section is prohibited.

9 **Sec. 9.** RCW 18.130.095 and 2005 c 274 s 231 are each amended to
10 read as follows:

11 (1)(a) The secretary, in consultation with the disciplining
12 authorities, shall develop uniform procedural rules to respond to
13 public inquiries concerning complaints and their disposition, active
14 investigations, statement of charges, findings of fact, and final
15 orders involving a ((licensee)) license holder, applicant, or
16 unlicensed person. The uniform procedural rules adopted under this
17 subsection apply to all adjudicative proceedings conducted under this
18 chapter and shall include provisions for establishing time periods for
19 initial assessment, investigation, charging, discovery, settlement, and
20 adjudication of complaints, and shall include enforcement provisions
21 for violations of the specific time periods by the department, the
22 disciplining authority, and the respondent. A ((licensee)) license
23 holder must be notified upon receipt of a complaint, except when the
24 notification would impede an effective investigation. At the earliest
25 point of time the ((licensee)) license holder must be allowed to submit
26 a written statement about that complaint, which statement must be
27 included in the file. Complaints filed after July 27, 1997, are exempt
28 from public disclosure under chapter 42.56 RCW until the complaint has
29 been initially assessed and determined to warrant an investigation by
30 the disciplining authority. Complaints determined not to warrant an
31 investigation by the disciplining authority are no longer considered
32 complaints, but must remain in the records and tracking system of the
33 department. Information about complaints that did not warrant an
34 investigation, including the existence of the complaint, may be
35 released only upon receipt of a written public disclosure request or
36 pursuant to an interagency agreement as provided in (b) of this
37 subsection. Complaints determined to warrant no cause for action after

1 investigation are subject to public disclosure, must include an
2 explanation of the determination to close the complaint, and must
3 remain in the records and tracking system of the department.

4 (b) The secretary, on behalf of the disciplining authorities, shall
5 enter into interagency agreements for the exchange of records, which
6 may include complaints filed but not yet assessed, with other state
7 agencies if access to the records will assist those agencies in meeting
8 their federal or state statutory responsibilities. Records obtained by
9 state agencies under the interagency agreements are subject to the
10 limitations on disclosure contained in (a) of this subsection.

11 (2) The uniform procedures for conducting investigations shall
12 provide that prior to taking a written statement:

13 (a) For violation of this chapter, the investigator shall inform
14 such person, in writing of: (i) The nature of the complaint; (ii) that
15 the person may consult with legal counsel at his or her expense prior
16 to making a statement; and (iii) that any statement that the person
17 makes may be used in an adjudicative proceeding conducted under this
18 chapter; and

19 (b) From a witness or potential witness in an investigation under
20 this chapter, the investigator shall inform the person, in writing,
21 that the statement may be released to the (~~licensee~~) license holder,
22 applicant, or unlicensed person under investigation if a statement of
23 charges is issued.

24 (3) Only upon the authorization of a disciplining authority
25 identified in RCW 18.130.040(2)(b), the secretary, or his or her
26 designee, may serve as the presiding officer for any disciplinary
27 proceedings of the disciplining authority authorized under this
28 chapter. (~~Except as provided in RCW 18.130.050(8),~~) The presiding
29 officer shall not vote on or make any final decision in cases
30 pertaining to standards of practice or where clinical expertise is
31 necessary. All functions performed by the presiding officer shall be
32 subject to chapter 34.05 RCW. The secretary, in consultation with the
33 disciplining authorities, shall adopt procedures for implementing this
34 subsection.

35 (4) The uniform procedural rules shall be adopted by all
36 disciplining authorities listed in RCW 18.130.040(2), and shall be used
37 for all adjudicative proceedings conducted under this chapter, as
38 defined by chapter 34.05 RCW. The uniform procedural rules shall

1 address the use of a presiding officer authorized in subsection (3) of
2 this section to determine and issue decisions on all legal issues and
3 motions arising during adjudicative proceedings.

4 **Sec. 10.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are
5 each reenacted and amended to read as follows:

6 Upon a finding, after hearing, that a license holder (~~or~~
7 ~~applicant~~) has committed unprofessional conduct or is unable to
8 practice with reasonable skill and safety due to a physical or mental
9 condition, the disciplining authority (~~may consider the imposition of~~
10 ~~sanctions, taking into account~~) shall issue an order including
11 sanctions adopted in accordance with the schedule adopted under section
12 12 of this act giving proper consideration to any prior findings of
13 fact under RCW 18.130.110, any stipulations to informal disposition
14 under RCW 18.130.172, and any action taken by other in-state or out-of-
15 state disciplining authorities(~~, and issue an~~). The order
16 (~~providing~~) must provide for one or any combination of the following,
17 as directed by the schedule:

- 18 (1) Revocation of the license;
- 19 (2) Suspension of the license for a fixed or indefinite term;
- 20 (3) Restriction or limitation of the practice;
- 21 (4) Requiring the satisfactory completion of a specific program of
22 remedial education or treatment;
- 23 (5) The monitoring of the practice by a supervisor approved by the
24 disciplining authority;
- 25 (6) Censure or reprimand;
- 26 (7) Compliance with conditions of probation for a designated period
27 of time;
- 28 (8) Payment of a fine for each violation of this chapter, not to
29 exceed five thousand dollars per violation. Funds received shall be
30 placed in the health professions account;
- 31 (9) Denial of the license request;
- 32 (10) Corrective action;
- 33 (11) Refund of fees billed to and collected from the consumer;
- 34 (12) A surrender of the practitioner's license in lieu of other
35 sanctions, which must be reported to the federal data bank.

36 Any of the actions under this section may be totally or partly
37 stayed by the disciplining authority. Safeguarding the public's health

1 and safety is the paramount responsibility of every disciplining
2 authority (~~and~~). In determining what action is appropriate, the
3 disciplining authority must consider the schedule adopted under section
4 12 of this act. Where the schedule allows flexibility in determining
5 the appropriate sanction, the disciplining authority must first
6 consider what sanctions are necessary to protect or compensate the
7 public. Only after such provisions have been made may the disciplining
8 authority consider and include in the order requirements designed to
9 rehabilitate the license holder (~~or applicant~~). All costs associated
10 with compliance with orders issued under this section are the
11 obligation of the license holder (~~or applicant~~). The disciplining
12 authority may order permanent revocation of a license if it finds that
13 the license holder can never be rehabilitated or can never regain the
14 ability to practice with reasonable skill and safety.

15 Surrender or permanent revocation of a license under this section
16 is not subject to a petition for reinstatement under RCW 18.130.150.

17 The disciplining authority may determine that a case presents
18 unique circumstances that the schedule adopted under section 12 of this
19 act does not adequately address. The disciplining authority may
20 deviate from the schedule adopted under section 12 of this act when
21 selecting appropriate sanctions, but the disciplining authority must
22 issue a written explanation of the basis for not following the
23 schedule.

24 The (~~licensee or applicant~~) license holder may enter into a
25 stipulated disposition of charges that includes one or more of the
26 sanctions of this section, but only after a statement of charges has
27 been issued and the (~~licensee~~) license holder has been afforded the
28 opportunity for a hearing and has elected on the record to forego such
29 a hearing. The stipulation shall either contain one or more specific
30 findings of unprofessional conduct or inability to practice, or a
31 statement by the (~~licensee~~) license holder acknowledging that
32 evidence is sufficient to justify one or more specified findings of
33 unprofessional conduct or inability to practice. The stipulation
34 entered into pursuant to this subsection shall be considered formal
35 disciplinary action for all purposes.

36 **Sec. 11.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to
37 read as follows:

1 (1) If the disciplining authority believes a license holder (~~(or~~
2 ~~applicant)~~) may be unable to practice with reasonable skill and safety
3 to consumers by reason of any mental or physical condition, a statement
4 of charges in the name of the disciplining authority shall be served on
5 the license holder (~~(or applicant)~~) and notice shall also be issued
6 providing an opportunity for a hearing. The hearing shall be limited
7 to the sole issue of the capacity of the license holder (~~(or~~
8 ~~applicant)~~) to practice with reasonable skill and safety. If the
9 disciplining authority determines that the license holder (~~(or~~
10 ~~applicant)~~) is unable to practice with reasonable skill and safety for
11 one of the reasons stated in this subsection, the disciplining
12 authority shall impose such sanctions under RCW 18.130.160 as is deemed
13 necessary to protect the public.

14 (2)(a) In investigating or adjudicating a complaint or report that
15 a license holder (~~(or applicant)~~) may be unable to practice with
16 reasonable skill or safety by reason of any mental or physical
17 condition, the disciplining authority may require a license holder (~~(or~~
18 ~~applicant)~~) to submit to a mental or physical examination by one or
19 more licensed or certified health professionals designated by the
20 disciplining authority. The license holder (~~(or applicant)~~) shall be
21 provided written notice of the disciplining authority's intent to order
22 a mental or physical examination, which notice shall include: (i) A
23 statement of the specific conduct, event, or circumstances justifying
24 an examination; (ii) a summary of the evidence supporting the
25 disciplining authority's concern that the license holder (~~(or~~
26 ~~applicant)~~) may be unable to practice with reasonable skill and safety
27 by reason of a mental or physical condition, and the grounds for
28 believing such evidence to be credible and reliable; (iii) a statement
29 of the nature, purpose, scope, and content of the intended examination;
30 (iv) a statement that the license holder (~~(or applicant)~~) has the right
31 to respond in writing within twenty days to challenge the disciplining
32 authority's grounds for ordering an examination or to challenge the
33 manner or form of the examination; and (v) a statement that if the
34 license holder (~~(or applicant)~~) timely responds to the notice of
35 intent, then the license holder (~~(or applicant)~~) will not be required
36 to submit to the examination while the response is under consideration.

37 (b) Upon submission of a timely response to the notice of intent to
38 order a mental or physical examination, the license holder (~~(or~~

1 ~~applicant~~) shall have an opportunity to respond to or refute such an
2 order by submission of evidence or written argument or both. The
3 evidence and written argument supporting and opposing the mental or
4 physical examination shall be reviewed by either a panel of the
5 disciplining authority members who have not been involved with the
6 allegations against the license holder (~~or applicant~~) or a neutral
7 decision maker approved by the disciplining authority. The reviewing
8 panel of the disciplining authority or the approved neutral decision
9 maker may, in its discretion, ask for oral argument from the parties.
10 The reviewing panel of the disciplining authority or the approved
11 neutral decision maker shall prepare a written decision as to whether:
12 There is reasonable cause to believe that the license holder (~~or~~
13 ~~applicant~~) may be unable to practice with reasonable skill and safety
14 by reason of a mental or physical condition, or the manner or form of
15 the mental or physical examination is appropriate, or both.

16 (c) Upon receipt by the disciplining authority of the written
17 decision, or upon the failure of the license holder (~~or applicant~~) to
18 timely respond to the notice of intent, the disciplining authority may
19 issue an order requiring the license holder (~~or applicant~~) to undergo
20 a mental or physical examination. All such mental or physical
21 examinations shall be narrowly tailored to address only the alleged
22 mental or physical condition and the ability of the license holder (~~or~~
23 ~~applicant~~) to practice with reasonable skill and safety. An order of
24 the disciplining authority requiring the license holder (~~or~~
25 ~~applicant~~) to undergo a mental or physical examination is not a final
26 order for purposes of appeal. The cost of the examinations ordered by
27 the disciplining authority shall be paid out of the health professions
28 account. In addition to any examinations ordered by the disciplining
29 authority, the (~~licensee~~) license holder may submit physical or
30 mental examination reports from licensed or certified health
31 professionals of the license holder's (~~or applicant's~~) choosing and
32 expense.

33 (d) If the disciplining authority finds that a license holder (~~or~~
34 ~~applicant~~) has failed to submit to a properly ordered mental or
35 physical examination, then the disciplining authority may order
36 appropriate action or discipline under RCW 18.130.180(9), unless the
37 failure was due to circumstances beyond the person's control. However,
38 no such action or discipline may be imposed unless the license holder

1 ((~~or applicant~~)) has had the notice and opportunity to challenge the
2 disciplining authority's grounds for ordering the examination, to
3 challenge the manner and form, to assert any other defenses, and to
4 have such challenges or defenses considered by either a panel of the
5 disciplining authority members who have not been involved with the
6 allegations against the license holder ((~~or applicant~~)) or a neutral
7 decision maker approved by the disciplining authority, as previously
8 set forth in this section. Further, the action or discipline ordered
9 by the disciplining authority shall not be more severe than a
10 suspension of the license, certification, registration, or application
11 until such time as the license holder ((~~or applicant~~)) complies with
12 the properly ordered mental or physical examination.

13 (e) Nothing in this section shall restrict the power of a
14 disciplining authority to act in an emergency under RCW 34.05.422(4),
15 34.05.479, and 18.130.050(~~((+7))~~) (8).

16 (f) A determination by a court of competent jurisdiction that a
17 license holder ((~~or applicant~~)) is mentally incompetent or (~~((mentally~~
18 ~~ill~~)) an individual with mental illness is presumptive evidence of the
19 license holder's ((~~or applicant's~~)) inability to practice with
20 reasonable skill and safety. An individual affected under this section
21 shall at reasonable intervals be afforded an opportunity, at his or her
22 expense, to demonstrate that the individual can resume competent
23 practice with reasonable skill and safety to the consumer.

24 (3) For the purpose of subsection (2) of this section, (~~(an~~
25 ~~applicant or~~)) a license holder governed by this chapter, by making
26 application, practicing, or filing a license renewal, is deemed to have
27 given consent to submit to a mental, physical, or psychological
28 examination when directed in writing by the disciplining authority and
29 further to have waived all objections to the admissibility or use of
30 the examining health professional's testimony or examination reports by
31 the disciplining authority on the ground that the testimony or reports
32 constitute privileged communications.

33 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.130
34 RCW to read as follows:

35 (1) Each of the disciplining authorities identified in RCW
36 18.130.040(2)(b) shall appoint a representative to review the
37 secretary's sanctioning guidelines, as well as guidelines adopted by

1 any of the boards and commissions, and collaborate to develop a
2 schedule that defines appropriate ranges of sanctions that are
3 applicable upon a determination that a license holder has committed
4 unprofessional conduct as defined in this chapter or the chapters
5 specified in RCW 18.130.040(2). The schedule must identify aggravating
6 and mitigating circumstances that may enhance or reduce the sanction
7 imposed by the disciplining authority for unprofessional conduct. The
8 schedule must apply to all disciplining authorities. In addition, the
9 disciplining authorities shall make provisions for instances in which
10 there are multiple findings of unprofessional conduct. When
11 establishing the proposed schedule, the disciplining authorities shall
12 consider maintaining consistent sanction determinations that maximize
13 the protection of the public's health and while maintaining the rights
14 of health care providers of the different health professions. The
15 disciplining authorities shall submit the proposed schedule and
16 recommendations to modify or adopt the secretary's guidelines to the
17 secretary no later than November 15, 2008.

18 (2) The secretary shall adopt rules establishing a uniform
19 sanctioning schedule that is consistent with the proposed schedule
20 developed under subsection (1) of this section. The schedule shall be
21 applied to all disciplinary actions commenced under this chapter after
22 January 1, 2009. The secretary shall use his or her emergency
23 rule-making authority pursuant to the procedures under chapter 34.05
24 RCW, to adopt rules that take effect no later than January 1, 2009, to
25 implement the schedule.

26 (3) The disciplining authority may determine that a case presents
27 unique circumstances that the schedule adopted under this section does
28 not adequately address. The disciplining authority may deviate from
29 the schedule adopted under this section when selecting appropriate
30 sanctions, but the disciplining authority must issue a written
31 explanation in the order of the basis for not following the schedule.

32 (4) The secretary shall report to the legislature by January 15,
33 2009, on the adoption of the sanctioning schedule.

34 **Sec. 13.** RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each
35 amended to read as follows:

36 (1) Subject to RCW 40.07.040, the disciplinary authority shall
37 submit (~~(a biennial)~~) an annual report to the legislature on its

1 proceedings during the ((biennium)) year, detailing the number of
2 complaints made, investigated, and adjudicated and manner of
3 disposition. In addition, the report must provide data on the
4 department's background check activities conducted under section 7 of
5 this act and the effectiveness of those activities in identifying
6 potential license holders who may not be qualified to practice safely.
7 The report must summarize the distribution of the number of cases
8 assigned to each attorney and investigator for each profession. The
9 identity of the attorney and investigator must remain anonymous. The
10 report may include recommendations for improving the disciplinary
11 process, including proposed legislation. The department shall develop
12 a uniform report format.

13 (2) Each disciplining authority identified in RCW 18.130.040(2)(b)
14 may submit an annual report to complement the report required under
15 subsection (1) of this section. Each report may provide additional
16 information about the disciplinary activities, rule-making and policy
17 activities, and receipts and expenditures for the individual
18 disciplining authority.

19 **Sec. 14.** RCW 70.41.210 and 2005 c 470 s 1 are each amended to read
20 as follows:

21 (1) The chief administrator or executive officer of a hospital
22 shall report to the department when the practice of a health care
23 practitioner as defined in subsection (2) of this section is
24 restricted, suspended, limited, or terminated based upon a conviction,
25 determination, or finding by the hospital that the health care
26 practitioner has committed an action defined as unprofessional conduct
27 under RCW 18.130.180. The chief administrator or executive officer
28 shall also report any voluntary restriction or termination of the
29 practice of a health care practitioner as defined in subsection (2) of
30 this section while the practitioner is under investigation or the
31 subject of a proceeding by the hospital regarding unprofessional
32 conduct, or in return for the hospital not conducting such an
33 investigation or proceeding or not taking action. The department will
34 forward the report to the appropriate disciplining authority.

35 (2) The reporting requirements apply to the following health care
36 practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced
37 registered nurse practitioners as defined in chapter 18.79 RCW;

1 dentists as defined in chapter 18.32 RCW; naturopaths as defined in
2 chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW;
3 osteopathic physicians and surgeons as defined in chapter 18.57 RCW;
4 osteopathic ((~~physician~~—[~~physicians'~~])) physicians' assistants as
5 defined in chapter 18.57A RCW; physicians as defined in chapter 18.71
6 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric
7 physicians and surgeons as defined in chapter 18.22 RCW; and
8 psychologists as defined in chapter 18.83 RCW.

9 (3) Reports made under subsection (1) of this section shall be made
10 within fifteen days of the date: (a) A conviction, determination, or
11 finding is made by the hospital that the health care practitioner has
12 committed an action defined as unprofessional conduct under RCW
13 18.130.180; or (b) the voluntary restriction or termination of the
14 practice of a health care practitioner, including his or her voluntary
15 resignation, while under investigation or the subject of proceedings
16 regarding unprofessional conduct under RCW 18.130.180 is accepted by
17 the hospital.

18 (4) Failure of a hospital to comply with this section is punishable
19 by a civil penalty not to exceed ((~~two~~)) five hundred ((~~fifty~~))
20 dollars.

21 (5) A hospital, its chief administrator, or its executive officer
22 who files a report under this section is immune from suit, whether
23 direct or derivative, in any civil action related to the filing or
24 contents of the report, unless the conviction, determination, or
25 finding on which the report and its content are based is proven to not
26 have been made in good faith. The prevailing party in any action
27 brought alleging the conviction, determination, finding, or report was
28 not made in good faith, shall be entitled to recover the costs of
29 litigation, including reasonable attorneys' fees.

30 (6) The department shall forward reports made under subsection (1)
31 of this section to the appropriate disciplining authority designated
32 under Title 18 RCW within fifteen days of the date the report is
33 received by the department. The department shall notify a hospital
34 that has made a report under subsection (1) of this section of the
35 results of the disciplining authority's case disposition decision
36 within fifteen days after the case disposition. Case disposition is
37 the decision whether to issue a statement of charges, take informal
38 action, or close the complaint without action against a practitioner.

1 In its biennial report to the legislature under RCW 18.130.310, the
2 department shall specifically identify the case dispositions of reports
3 made by hospitals under subsection (1) of this section.

4 (7) The department shall not increase hospital license fees to
5 carry out this section before July 1, (~~2007~~) 2008.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 42.52 RCW
7 to read as follows:

8 Members of a health profession board or commission as identified in
9 RCW 18.130.040(2)(b) may express their professional opinions to an
10 elected official about the work of the board or commission on which the
11 member serves, even if those opinions differ from the department of
12 health's official position. Such communication shall be to inform the
13 elected official and not to lobby in support or opposition to any
14 initiative to the legislature.

15 **Sec. 16.** RCW 43.70.320 and 1993 c 492 s 411 are each amended to
16 read as follows:

17 (1) There is created in the state treasury an account to be known
18 as the health professions account. All fees received by the department
19 for health professions licenses, registration, certifications,
20 renewals, or examinations and the civil penalties assessed and
21 collected by the department under RCW 18.130.190 shall be forwarded to
22 the state treasurer who shall credit such moneys to the health
23 professions account.

24 (2) All expenses incurred in carrying out the health professions
25 licensing activities of the department shall be paid from the account
26 as authorized by legislative appropriation, except as provided in
27 subsection (4) of this section. Any residue in the account shall be
28 accumulated and shall not revert to the general fund at the end of the
29 biennium.

30 (3) The secretary shall biennially prepare a budget request based
31 on the anticipated costs of administering the health professions
32 licensing activities of the department which shall include the
33 estimated income from health professions fees.

34 (4) The secretary shall, at the request of a board or commission as
35 applicable, spend unappropriated funds in the health professions
36 account that are allocated to the requesting board or commission to

1 meet unanticipated costs of that board or commission when revenues
2 exceed more than fifteen percent over the department's estimated
3 six-year spending projections for the requesting board or commission.
4 Unanticipated costs shall be limited to spending as authorized in
5 subsection (3) of this section for anticipated costs.

6 **Sec. 17.** RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are
7 each reenacted and amended to read as follows:

8 (1) This chapter applies only to the secretary and the boards and
9 commissions having jurisdiction in relation to the professions licensed
10 under the chapters specified in this section. This chapter does not
11 apply to any business or profession not licensed under the chapters
12 specified in this section.

13 (2)(a) The secretary has authority under this chapter in relation
14 to the following professions:

15 (i) Dispensing opticians licensed and designated apprentices under
16 chapter 18.34 RCW;

17 (ii) Naturopaths licensed under chapter 18.36A RCW;

18 (iii) Midwives licensed under chapter 18.50 RCW;

19 (iv) Ocularists licensed under chapter 18.55 RCW;

20 (v) Massage operators and businesses licensed under chapter 18.108
21 RCW;

22 (vi) Dental hygienists licensed under chapter 18.29 RCW;

23 (vii) Acupuncturists licensed under chapter 18.06 RCW;

24 (viii) Radiologic technologists certified and X-ray technicians
25 registered under chapter 18.84 RCW;

26 (ix) Respiratory care practitioners licensed under chapter 18.89
27 RCW;

28 (x) Persons registered under chapter 18.19 RCW;

29 (xi) Persons licensed as mental health counselors, marriage and
30 family therapists, and social workers under chapter 18.225 RCW;

31 (xii) Persons registered as nursing pool operators under chapter
32 18.52C RCW;

33 (xiii) Nursing assistants registered or certified under chapter
34 18.88A RCW;

35 (xiv) Health care assistants certified under chapter 18.135 RCW;

36 (xv) Dietitians and nutritionists certified under chapter 18.138
37 RCW;

1 (xvi) Chemical dependency professionals certified under chapter
2 18.205 RCW;

3 (xvii) Sex offender treatment providers and certified affiliate sex
4 offender treatment providers certified under chapter 18.155 RCW;

5 (xviii) Persons licensed and certified under chapter 18.73 RCW or
6 RCW 18.71.205;

7 (xix) Denturists licensed under chapter 18.30 RCW;

8 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

9 (xxi) Surgical technologists registered under chapter 18.215 RCW;

10 (xxii) Recreational therapists; and

11 (xxiii) Animal massage practitioners certified under chapter 18.240
12 RCW.

13 (b) The boards and commissions having authority under this chapter
14 are as follows:

15 (i) The podiatric medical board as established in chapter 18.22
16 RCW;

17 (ii) The chiropractic quality assurance commission as established
18 in chapter 18.25 RCW;

19 (iii) The dental quality assurance commission as established in
20 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and
21 licenses and registrations issued under chapter 18.260 RCW;

22 (iv) The board of hearing and speech as established in chapter
23 18.35 RCW;

24 (v) The board of examiners for nursing home administrators as
25 established in chapter 18.52 RCW;

26 (vi) The optometry board as established in chapter 18.54 RCW
27 governing licenses issued under chapter 18.53 RCW;

28 (vii) The board of osteopathic medicine and surgery as established
29 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
30 18.57A RCW;

31 (viii) The board of pharmacy as established in chapter 18.64 RCW
32 governing licenses issued under chapters 18.64 and 18.64A RCW;

33 (ix) The medical quality assurance commission as established in
34 chapter 18.71 RCW governing licenses and registrations issued under
35 chapters 18.71 and 18.71A RCW;

36 (x) The board of physical therapy as established in chapter 18.74
37 RCW;

1 (xi) The board of occupational therapy practice as established in
2 chapter 18.59 RCW;

3 (xii) The nursing care quality assurance commission as established
4 in chapter 18.79 RCW governing licenses and registrations issued under
5 that chapter;

6 (xiii) The examining board of psychology and its disciplinary
7 committee as established in chapter 18.83 RCW; and

8 (xiv) The veterinary board of governors as established in chapter
9 18.92 RCW.

10 (3) In addition to the authority to discipline license holders, the
11 disciplining authority has the authority to grant or deny licenses
12 (~~based on the conditions and criteria established in this chapter and~~
13 ~~the chapters specified in subsection (2) of this section. This chapter~~
14 ~~also governs any investigation, hearing, or proceeding relating to~~
15 ~~denial of licensure or issuance of a license conditioned on the~~
16 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~
17 ~~by)). The disciplining authority may also grant a license subject to
18 conditions.~~

19 (4) All disciplining authorities shall adopt procedures to ensure
20 substantially consistent application of this chapter, the Uniform
21 Disciplinary Act, among the disciplining authorities listed in
22 subsection (2) of this section.

23 **Sec. 18.** RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and
24 2007 c 70 s 11 are each reenacted and amended to read as follows:

25 (1) This chapter applies only to the secretary and the boards and
26 commissions having jurisdiction in relation to the professions licensed
27 under the chapters specified in this section. This chapter does not
28 apply to any business or profession not licensed under the chapters
29 specified in this section.

30 (2)(a) The secretary has authority under this chapter in relation
31 to the following professions:

32 (i) Dispensing opticians licensed and designated apprentices under
33 chapter 18.34 RCW;

34 (ii) Naturopaths licensed under chapter 18.36A RCW;

35 (iii) Midwives licensed under chapter 18.50 RCW;

36 (iv) Ocularists licensed under chapter 18.55 RCW;

1 (v) Massage operators and businesses licensed under chapter 18.108
2 RCW;

3 (vi) Dental hygienists licensed under chapter 18.29 RCW;

4 (vii) Acupuncturists licensed under chapter 18.06 RCW;

5 (viii) Radiologic technologists certified and X-ray technicians
6 registered under chapter 18.84 RCW;

7 (ix) Respiratory care practitioners licensed under chapter 18.89
8 RCW;

9 (x) Persons registered under chapter 18.19 RCW;

10 (xi) Persons licensed as mental health counselors, marriage and
11 family therapists, and social workers under chapter 18.225 RCW;

12 (xii) Persons registered as nursing pool operators under chapter
13 18.52C RCW;

14 (xiii) Nursing assistants registered or certified under chapter
15 18.88A RCW;

16 (xiv) Health care assistants certified under chapter 18.135 RCW;

17 (xv) Dietitians and nutritionists certified under chapter 18.138
18 RCW;

19 (xvi) Chemical dependency professionals certified under chapter
20 18.205 RCW;

21 (xvii) Sex offender treatment providers and certified affiliate sex
22 offender treatment providers certified under chapter 18.155 RCW;

23 (xviii) Persons licensed and certified under chapter 18.73 RCW or
24 RCW 18.71.205;

25 (xix) Denturists licensed under chapter 18.30 RCW;

26 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

27 (xxi) Surgical technologists registered under chapter 18.215 RCW;

28 (xxii) Recreational therapists;

29 (xxiii) Animal massage practitioners certified under chapter 18.240
30 RCW; and

31 (xxiv) Athletic trainers licensed under chapter 18.250 RCW.

32 (b) The boards and commissions having authority under this chapter
33 are as follows:

34 (i) The podiatric medical board as established in chapter 18.22
35 RCW;

36 (ii) The chiropractic quality assurance commission as established
37 in chapter 18.25 RCW;

1 (iii) The dental quality assurance commission as established in
2 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and
3 licenses and registrations issued under chapter 18.260 RCW;

4 (iv) The board of hearing and speech as established in chapter
5 18.35 RCW;

6 (v) The board of examiners for nursing home administrators as
7 established in chapter 18.52 RCW;

8 (vi) The optometry board as established in chapter 18.54 RCW
9 governing licenses issued under chapter 18.53 RCW;

10 (vii) The board of osteopathic medicine and surgery as established
11 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
12 18.57A RCW;

13 (viii) The board of pharmacy as established in chapter 18.64 RCW
14 governing licenses issued under chapters 18.64 and 18.64A RCW;

15 (ix) The medical quality assurance commission as established in
16 chapter 18.71 RCW governing licenses and registrations issued under
17 chapters 18.71 and 18.71A RCW;

18 (x) The board of physical therapy as established in chapter 18.74
19 RCW;

20 (xi) The board of occupational therapy practice as established in
21 chapter 18.59 RCW;

22 (xii) The nursing care quality assurance commission as established
23 in chapter 18.79 RCW governing licenses and registrations issued under
24 that chapter;

25 (xiii) The examining board of psychology and its disciplinary
26 committee as established in chapter 18.83 RCW; and

27 (xiv) The veterinary board of governors as established in chapter
28 18.92 RCW.

29 (3) In addition to the authority to discipline license holders, the
30 disciplining authority has the authority to grant or deny licenses
31 (~~based on the conditions and criteria established in this chapter and~~
32 ~~the chapters specified in subsection (2) of this section. This chapter~~
33 ~~also governs any investigation, hearing, or proceeding relating to~~
34 ~~denial of licensure or issuance of a license conditioned on the~~
35 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~
36 ~~by)). The disciplining authority may also grant a license subject to
37 conditions.~~

1 (4) All disciplining authorities shall adopt procedures to ensure
2 substantially consistent application of this chapter, the Uniform
3 Disciplinary Act, among the disciplining authorities listed in
4 subsection (2) of this section.

5 NEW SECTION. **Sec. 19.** A new section is added to chapter 18.130
6 RCW to read as follows:

7 (1) The disciplining authority may deny an application for
8 licensure or grant a license with conditions if the applicant:

9 (a) Has had his or her license to practice any health care
10 profession suspended, revoked, or restricted, by competent authority in
11 any state, federal, or foreign jurisdiction;

12 (b) Has committed any act defined as unprofessional conduct for a
13 license holder under RCW 18.130.180;

14 (c) Has been convicted or is subject to current prosecution or
15 pending charges of a crime involving moral turpitude or a crime
16 identified in RCW 43.43.830. For purposes of this section, conviction
17 includes all instances in which a plea of guilty or nolo contendere is
18 the basis for the conviction and all proceedings in which the
19 prosecution or sentence has been deferred or suspended. At the request
20 of an applicant for an original license whose conviction is under
21 appeal, the disciplining authority may defer decision upon the
22 application during the pendency of such a prosecution or appeal;

23 (d) Fails to prove that he or she is qualified in accordance with
24 the provisions of this chapter, the chapters identified in RCW
25 18.130.040(2), or the rules adopted by the disciplining authority; or

26 (e) Is not able to practice with reasonable skill and safety to
27 consumers by reason of any mental or physical condition.

28 (i) The disciplining authority may require the applicant, at his or
29 her own expense, to submit to a mental, physical, or psychological
30 examination by one or more licensed health professionals designated by
31 the disciplining authority. The disciplining authority shall provide
32 written notice of its requirement for a mental or physical examination
33 that includes a statement of the specific conduct, event, or
34 circumstances justifying an examination and a statement of the nature,
35 purpose, scope, and content of the intended examination. If the
36 applicant fails to submit to the examination or provide the results of

1 the examination or any required waivers, the disciplining authority may
2 deny the application.

3 (ii) An applicant governed by this chapter is deemed to have given
4 consent to submit to a mental, physical, or psychological examination
5 when directed in writing by the disciplining authority and further to
6 have waived all objections to the admissibility or use of the examining
7 health professional's testimony or examination reports by the
8 disciplining authority on the grounds that the testimony or reports
9 constitute privileged communications.

10 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not
11 apply to a decision to deny a license under this section.

12 (3) The disciplining authority shall give written notice to the
13 applicant of the decision to deny a license or grant a license with
14 conditions in response to an application for a license. The notice
15 must state the grounds and factual basis for the action and be served
16 upon the applicant.

17 (4) A license applicant who is aggrieved by the decision to deny
18 the license or grant the license with conditions has the right to an
19 adjudicative proceeding. The application for adjudicative proceeding
20 must be in writing, state the basis for contesting the adverse action,
21 include a copy of the adverse notice, and be served on and received by
22 the department within twenty-eight days of the decision. The license
23 applicant has the burden to establish, by a preponderance of evidence,
24 that the license applicant is qualified in accordance with the
25 provisions of this chapter, the chapters identified in RCW
26 18.130.040(2), and the rules adopted by the disciplining authority.

27 NEW SECTION. **Sec. 20.** A new section is added to chapter 18.130
28 RCW to read as follows:

29 (1)(a) A licensee must produce documents, records, or other items
30 that are within his or her possession or control within twenty-one
31 calendar days of service of a request by a disciplining authority. If
32 the twenty-one calendar day limit results in a hardship upon the
33 licensee, he or she may request, for good cause, an extension not to
34 exceed thirty additional calendar days.

35 (b) In the event the licensee fails to produce the documents,
36 records, or other items as requested by the disciplining authority or
37 fails to obtain an extension of the time for response, the disciplining

1 authority may issue a written citation and assess a fine of up to one
2 hundred dollars per day for each day after the issuance of the citation
3 until the documents, records, or other items are produced.

4 (c) In no event may the administrative fine assessed by the
5 disciplining authority exceed five thousand dollars for each
6 investigation made with respect to the violation.

7 (2) Citations issued under this section must include the following:

8 (a) A statement that the citation represents a determination that
9 the person named has failed to produce documents, records, or other
10 items as required by this section and that the determination is final
11 unless contested as provided in this section;

12 (b) A statement of the specific circumstances;

13 (c) A statement of the monetary fine, which is up to one hundred
14 dollars per day for each day after the issuance of the citation;

15 (d) A statement informing the licensee that if the licensee desires
16 a hearing to contest the finding of a violation, the hearing must be
17 requested by written notice to the disciplining authority within twenty
18 days of the date of issuance of the citation. The hearing is limited
19 to the issue of whether the licensee timely produced the requested
20 documents, records, or other items or had good cause for failure to do
21 so; and

22 (e) A statement that in the event a licensee fails to pay a fine
23 within thirty days of the date of assessment, the full amount of the
24 assessed fine must be added to the fee for renewal of the license
25 unless the citation is being appealed.

26 (3) RCW 18.130.165 governs proof and enforcement of the fine.

27 (4) Administrative fines collected under this section must be
28 deposited in the health professions account created in RCW 43.70.320.

29 (5) Issuance of a citation under this section does not preclude the
30 disciplining authority from pursuing other action under this chapter.

31 (6) The disciplining authority shall establish and make available
32 to licensees the maximum daily monetary fine that may be issued under
33 subsection (2)(c) of this section. The disciplining authority shall
34 review the maximum fine on a regular basis, but at a minimum, each
35 biennium.

36 **Sec. 21.** RCW 18.130.140 and 1984 c 279 s 14 are each amended to
37 read as follows:

1 An individual who has been disciplined (~~(or)~~), whose license has
2 been denied, or whose license has been granted with conditions by a
3 disciplining authority may appeal the decision as provided in chapter
4 34.05 RCW.

5 **Sec. 22.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to
6 read as follows:

7 A person whose license has been suspended (~~(or revoked)~~) under this
8 chapter may petition the disciplining authority for reinstatement after
9 an interval as determined by the disciplining authority in the order
10 unless the disciplining authority has found, pursuant to RCW
11 18.130.160, that the licensee can never be rehabilitated or can never
12 regain the ability to practice with reasonable skill and safety. The
13 disciplining authority shall hold hearings on the petition and may deny
14 the petition or may order reinstatement and impose terms and conditions
15 as provided in RCW 18.130.160 and issue an order of reinstatement. The
16 disciplining authority may require successful completion of an
17 examination as a condition of reinstatement.

18 A person whose license has been suspended for noncompliance with a
19 support order or (~~(a residential or)~~) visitation order under RCW
20 74.20A.320 may petition for reinstatement at any time by providing the
21 secretary a release issued by the department of social and health
22 services stating that the person is in compliance with the order. If
23 the person has continued to meet all other requirements for
24 reinstatement during the suspension, the secretary shall automatically
25 reissue the person's license upon receipt of the release, and payment
26 of a reinstatement fee, if any.

27 **Sec. 23.** RCW 18.130.165 and 1993 c 367 s 20 are each amended to
28 read as follows:

29 Where an order for payment of a fine is made as a result of a
30 citation under section 20 of this act or a hearing under RCW 18.130.100
31 or 18.130.190 and timely payment is not made as directed in the final
32 order, the disciplining authority may enforce the order for payment in
33 the superior court in the county in which the hearing was held. This
34 right of enforcement shall be in addition to any other rights the
35 disciplining authority may have as to any licensee ordered to pay a

1 fine but shall not be construed to limit a licensee's ability to seek
2 judicial review under RCW 18.130.140.

3 In any action for enforcement of an order of payment of a fine, the
4 disciplining authority's order is conclusive proof of the validity of
5 the order of payment of a fine and the terms of payment.

6 **Sec. 24.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
7 read as follows:

8 (1) Prior to serving a statement of charges under RCW 18.130.090 or
9 18.130.170, the disciplinary authority may furnish a statement of
10 allegations to the licensee (~~(or applicant)~~) along with a detailed
11 summary of the evidence relied upon to establish the allegations and a
12 proposed stipulation for informal resolution of the allegations. These
13 documents shall be exempt from public disclosure until such time as the
14 allegations are resolved either by stipulation or otherwise.

15 (2) The disciplinary authority and the (~~(applicant or)~~) licensee
16 may stipulate that the allegations may be disposed of informally in
17 accordance with this subsection. The stipulation shall contain a
18 statement of the facts leading to the filing of the complaint; the act
19 or acts of unprofessional conduct alleged to have been committed or the
20 alleged basis for determining that the (~~(applicant or)~~) licensee is
21 unable to practice with reasonable skill and safety; a statement that
22 the stipulation is not to be construed as a finding of either
23 unprofessional conduct or inability to practice; an acknowledgment that
24 a finding of unprofessional conduct or inability to practice, if
25 proven, constitutes grounds for discipline under this chapter; and an
26 agreement on the part of the licensee (~~(or applicant)~~) that the
27 sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2),
28 (6), and (8), may be imposed as part of the stipulation, except that no
29 fine may be imposed but the licensee (~~(or applicant)~~) may agree to
30 reimburse the disciplinary authority the costs of investigation and
31 processing the complaint up to an amount not exceeding one thousand
32 dollars per allegation; and an agreement on the part of the
33 disciplinary authority to forego further disciplinary proceedings
34 concerning the allegations. A stipulation entered into pursuant to
35 this subsection shall not be considered formal disciplinary action.

36 (3) If the licensee (~~(or applicant)~~) declines to agree to

1 disposition of the charges by means of a stipulation pursuant to
2 subsection (2) of this section, the disciplinary authority may proceed
3 to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

4 (4) Upon execution of a stipulation under subsection (2) of this
5 section by both the licensee (~~(or applicant)~~) and the disciplinary
6 authority, the complaint is deemed disposed of and shall become subject
7 to public disclosure on the same basis and to the same extent as other
8 records of the disciplinary authority. Should the licensee (~~(or~~
9 ~~applicant)~~) fail to pay any agreed reimbursement within thirty days of
10 the date specified in the stipulation for payment, the disciplinary
11 authority may seek collection of the amount agreed to be paid in the
12 same manner as enforcement of a fine under RCW 18.130.165.

13 **Sec. 25.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to
14 read as follows:

15 The following conduct, acts, or conditions constitute
16 unprofessional conduct for any license holder (~~(or applicant)~~) under
17 the jurisdiction of this chapter:

18 (1) The commission of any act involving moral turpitude,
19 dishonesty, or corruption relating to the practice of the person's
20 profession, whether the act constitutes a crime or not. If the act
21 constitutes a crime, conviction in a criminal proceeding is not a
22 condition precedent to disciplinary action. Upon such a conviction,
23 however, the judgment and sentence is conclusive evidence at the
24 ensuing disciplinary hearing of the guilt of the license holder (~~(or~~
25 ~~applicant)~~) of the crime described in the indictment or information,
26 and of the person's violation of the statute on which it is based. For
27 the purposes of this section, conviction includes all instances in
28 which a plea of guilty or nolo contendere is the basis for the
29 conviction and all proceedings in which the sentence has been deferred
30 or suspended. Nothing in this section abrogates rights guaranteed
31 under chapter 9.96A RCW;

32 (2) Misrepresentation or concealment of a material fact in
33 obtaining a license or in reinstatement thereof;

34 (3) All advertising which is false, fraudulent, or misleading;

35 (4) Incompetence, negligence, or malpractice which results in
36 injury to a patient or which creates an unreasonable risk that a
37 patient may be harmed. The use of a nontraditional treatment by itself

1 shall not constitute unprofessional conduct, provided that it does not
2 result in injury to a patient or create an unreasonable risk that a
3 patient may be harmed;

4 (5) Suspension, revocation, or restriction of the individual's
5 license to practice any health care profession by competent authority
6 in any state, federal, or foreign jurisdiction, a certified copy of the
7 order, stipulation, or agreement being conclusive evidence of the
8 revocation, suspension, or restriction;

9 (6) The possession, use, prescription for use, or distribution of
10 controlled substances or legend drugs in any way other than for
11 legitimate or therapeutic purposes, diversion of controlled substances
12 or legend drugs, the violation of any drug law, or prescribing
13 controlled substances for oneself;

14 (7) Violation of any state or federal statute or administrative
15 rule regulating the profession in question, including any statute or
16 rule defining or establishing standards of patient care or professional
17 conduct or practice;

18 (8) Failure to cooperate with the disciplining authority by:

19 (a) Not furnishing any papers (~~(or)~~), documents, records, or other
20 items;

21 (b) Not furnishing in writing a full and complete explanation
22 covering the matter contained in the complaint filed with the
23 disciplining authority;

24 (c) Not responding to subpoenas issued by the disciplining
25 authority, whether or not the recipient of the subpoena is the accused
26 in the proceeding; or

27 (d) Not providing reasonable and timely access for authorized
28 representatives of the disciplining authority seeking to perform
29 practice reviews at facilities utilized by the license holder;

30 (9) Failure to comply with an order issued by the disciplining
31 authority or a stipulation for informal disposition entered into with
32 the disciplining authority;

33 (10) Aiding or abetting an unlicensed person to practice when a
34 license is required;

35 (11) Violations of rules established by any health agency;

36 (12) Practice beyond the scope of practice as defined by law or
37 rule;

- 1 (13) Misrepresentation or fraud in any aspect of the conduct of the
2 business or profession;
- 3 (14) Failure to adequately supervise auxiliary staff to the extent
4 that the consumer's health or safety is at risk;
- 5 (15) Engaging in a profession involving contact with the public
6 while suffering from a contagious or infectious disease involving
7 serious risk to public health;
- 8 (16) Promotion for personal gain of any unnecessary or
9 inefficacious drug, device, treatment, procedure, or service;
- 10 (17) Conviction of any gross misdemeanor or felony relating to the
11 practice of the person's profession. For the purposes of this
12 subsection, conviction includes all instances in which a plea of guilty
13 or nolo contendere is the basis for conviction and all proceedings in
14 which the sentence has been deferred or suspended. Nothing in this
15 section abrogates rights guaranteed under chapter 9.96A RCW;
- 16 (18) The procuring, or aiding or abetting in procuring, a criminal
17 abortion;
- 18 (19) The offering, undertaking, or agreeing to cure or treat
19 disease by a secret method, procedure, treatment, or medicine, or the
20 treating, operating, or prescribing for any health condition by a
21 method, means, or procedure which the licensee refuses to divulge upon
22 demand of the disciplining authority;
- 23 (20) The willful betrayal of a practitioner-patient privilege as
24 recognized by law;
- 25 (21) Violation of chapter 19.68 RCW;
- 26 (22) Interference with an investigation or disciplinary proceeding
27 by willful misrepresentation of facts before the disciplining authority
28 or its authorized representative, or by the use of threats or
29 harassment against any patient or witness to prevent them from
30 providing evidence in a disciplinary proceeding or any other legal
31 action, or by the use of financial inducements to any patient or
32 witness to prevent or attempt to prevent him or her from providing
33 evidence in a disciplinary proceeding;
- 34 (23) Current misuse of:
- 35 (a) Alcohol;
- 36 (b) Controlled substances; or
- 37 (c) Legend drugs;

1 (24) Abuse of a client or patient or sexual contact with a client
2 or patient;

3 (25) Acceptance of more than a nominal gratuity, hospitality, or
4 subsidy offered by a representative or vendor of medical or health-
5 related products or services intended for patients, in contemplation of
6 a sale or for use in research publishable in professional journals,
7 where a conflict of interest is presented, as defined by rules of the
8 disciplining authority, in consultation with the department, based on
9 recognized professional ethical standards.

10 **Sec. 26.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read
11 as follows:

12 (1) Subject to the exceptions in subsections (3) (~~(and (4))~~)
13 through (5) of this section, and unless there is another provision of
14 law to the contrary, a person is not disqualified from employment by
15 the state of Washington or any of its counties, cities, towns,
16 municipal corporations, or quasi-municipal corporations, nor is a
17 person disqualified to practice, pursue or engage in any occupation,
18 trade, vocation, or business for which a license, permit, certificate
19 or registration is required to be issued by the state of Washington or
20 any of its counties, cities, towns, municipal corporations, or quasi-
21 municipal corporations solely because of a prior conviction of a
22 felony. However, this section does not preclude the fact of any prior
23 conviction of a crime from being considered.

24 (2) A person may be denied employment by the state of Washington or
25 any of its counties, cities, towns, municipal corporations, or quasi-
26 municipal corporations, or a person may be denied a license, permit,
27 certificate or registration to pursue, practice or engage in an
28 occupation, trade, vocation, or business by reason of the prior
29 conviction of a felony if the felony for which he or she was convicted
30 directly relates to the position of employment sought or to the
31 specific occupation, trade, vocation, or business for which the
32 license, permit, certificate or registration is sought, and the time
33 elapsed since the conviction is less than ten years. However, for
34 positions in the county treasurer's office, a person may be
35 disqualified from employment because of a prior guilty plea or
36 conviction of a felony involving embezzlement or theft, even if the
37 time elapsed since the guilty plea or conviction is ten years or more.

1 (3) A person is disqualified for any certificate required or
2 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior
3 guilty plea or the conviction of a felony involving sexual exploitation
4 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44
5 RCW where a minor is the victim, promoting prostitution of a minor
6 under chapter 9A.88 RCW, or a violation of similar laws of another
7 jurisdiction, even if the time elapsed since the guilty plea or
8 conviction is ten years or more.

9 (4) A person is disqualified from employment by school districts,
10 educational service districts, and their contractors hiring employees
11 who will have regularly scheduled unsupervised access to children,
12 because of a prior guilty plea or conviction of a felony involving
13 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
14 under chapter 9A.44 RCW where a minor is the victim, promoting
15 prostitution of a minor under chapter 9A.88 RCW, or a violation of
16 similar laws of another jurisdiction, even if the time elapsed since
17 the guilty plea or conviction is ten years or more.

18 (5) The provisions of this chapter do not apply to issuance of
19 licenses or credentials for professions regulated under chapter 18.130
20 RCW.

21 (6) Subsections (3) and (4) of this section only apply to a person
22 applying for a certificate or for employment on or after July 25, 1993.
23 Subsection (5) of this section only applies to a person applying for a
24 license or credential on or after the effective date of this section.

25 **Sec. 27.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read
26 as follows:

27 (1) Every defendant who has fulfilled the conditions of his or her
28 probation for the entire period thereof, or who shall have been
29 discharged from probation prior to the termination of the period
30 thereof, may at any time prior to the expiration of the maximum period
31 of punishment for the offense for which he or she has been convicted be
32 permitted in the discretion of the court to withdraw his or her plea of
33 guilty and enter a plea of not guilty, or if he or she has been
34 convicted after a plea of not guilty, the court may in its discretion
35 set aside the verdict of guilty; and in either case, the court may
36 thereupon dismiss the information or indictment against such defendant,
37 who shall thereafter be released from all penalties and disabilities

1 resulting from the offense or crime of which he or she has been
2 convicted. The probationer shall be informed of this right in his or
3 her probation papers: PROVIDED, That in any subsequent prosecution,
4 for any other offense, such prior conviction may be pleaded and proved,
5 and shall have the same effect as if probation had not been granted, or
6 the information or indictment dismissed.

7 (2)(a) After the period of probation has expired, the defendant may
8 apply to the sentencing court for a vacation of the defendant's record
9 of conviction under RCW 9.94A.640. The court may, in its discretion,
10 clear the record of conviction if it finds the defendant has met the
11 equivalent of the tests in RCW 9.94A.640(2) as those tests would be
12 applied to a person convicted of a crime committed before July 1, 1984.

13 (b) The clerk of the court in which the vacation order is entered
14 shall immediately transmit the order vacating the conviction to the
15 Washington state patrol identification section and to the local police
16 agency, if any, which holds criminal history information for the person
17 who is the subject of the conviction. The Washington state patrol and
18 any such local police agency shall immediately update their records to
19 reflect the vacation of the conviction, and shall transmit the order
20 vacating the conviction to the federal bureau of investigation. A
21 conviction that has been vacated under this section may not be
22 disseminated or disclosed by the state patrol or local law enforcement
23 agency to any person, except other criminal justice enforcement
24 agencies.

25 (3) This section does not apply to chapter 18.130 RCW.

26 **Sec. 28.** RCW 43.43.825 and 2006 c 99 s 8 are each amended to read
27 as follows:

28 (1) Upon a guilty plea or conviction of a person for any felony
29 crime involving homicide under chapter 9A.32 RCW, assault under chapter
30 9A.36 RCW, kidnapping under chapter 9A.40 RCW, ~~((or))~~ sex offenses
31 under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW,
32 violations of the uniform controlled substances act under chapter 69.50
33 RCW, any drug offense defined under RCW 9.94A.030, or a crime of any
34 type classified as a felony under Washington state law, the prosecuting
35 attorney shall notify the state patrol of such guilty pleas or
36 convictions.

1 (2) When the state patrol receives information that a person has
2 pled guilty to or been convicted of one of the felony crimes under
3 subsection (1) of this section, the state patrol shall transmit that
4 information to the department of health. It is the duty of the
5 department of health to identify whether the person holds a credential
6 issued by a disciplining authority listed under RCW 18.130.040, and
7 provide this information to the disciplining authority that issued the
8 credential to the person who pled guilty or was convicted of a crime
9 listed in subsection (1) of this section.

10 NEW SECTION. **Sec. 29.** A new section is added to chapter 18.71 RCW
11 to read as follows:

12 (1) The commission shall conduct a pilot project to evaluate the
13 effect of granting the commission additional authority over budget
14 development, spending, and staffing. The pilot project shall begin on
15 July 1, 2008, and conclude on June 30, 2013.

16 (2) The pilot project shall include the following provisions:

17 (a) That the secretary shall employ an executive director that is:

18 (i) Hired by and serves at the pleasure of the commission;

19 (ii) Exempt from the provisions of the civil service law, chapter
20 41.06 RCW and whose salary is established by the commission in
21 accordance with RCW 43.03.028 and 42.17.370; and

22 (iii) Responsible for performing all administrative duties of the
23 commission, including preparing an annual budget, and any other duties
24 as delegated to the executive director by the commission;

25 (b) Consistent with the budgeting and accounting act:

26 (i) With regard to budget for the remainder of the 2007-2009
27 biennium, the commission has authority to spend the remaining funds
28 allocated with respect to its professions, physicians regulated under
29 this chapter and physician assistants regulated under chapter 18.71A
30 RCW; and

31 (ii) Beginning with the 2009-2011 biennium, the commission is
32 responsible for proposing its own biennial budget which the secretary
33 must submit to the office of financial management;

34 (c) That, prior to adopting credentialing fees under RCW 43.70.250,
35 the secretary shall collaborate with the commission to determine the
36 appropriate fees necessary to support the activities of the commission;

1 (d) That, prior to the secretary exercising the secretary's
2 authority to adopt uniform rules and guidelines, or any other actions
3 that might impact the licensing or disciplinary authority of the
4 commission, the secretary shall first meet with the commission to
5 determine how those rules or guidelines, or changes to rules or
6 guidelines, might impact the commission's ability to effectively carry
7 out its statutory duties. If the commission, in consultation with the
8 secretary, determines that the proposed rules or guidelines, or changes
9 to existing rules or guidelines, will negatively impact the
10 commission's ability to effectively carry out its statutory duties,
11 then the individual commission shall collaborate with the secretary to
12 develop alternative solutions to mitigate the impacts. If an
13 alternative solution cannot be reached, the parties may resolve the
14 dispute through a mediator as set forth in (f) of this subsection;

15 (e) That the commission shall negotiate with the secretary to
16 develop performance-based expectations, including identification of key
17 performance measures. The performance expectations should focus on
18 consistent, timely regulation of health care professionals; and

19 (f) That in the event there is a disagreement between the
20 commission and the secretary, that is unable to be resolved through
21 negotiation, a representative of both parties shall agree on the
22 designation of a third party to mediate the dispute.

23 (3) By December 15, 2013, the secretary, the commission, and the
24 other commissions conducting similar pilot projects under sections 30
25 through 32 of this act, shall report to the governor and the
26 legislature on the results of the pilot project. The report shall:

27 (a) Compare the effectiveness of licensing and disciplinary
28 activities of each commission during the pilot project with the
29 licensing and disciplinary activities of the commission prior to the
30 pilot project and the disciplinary activities of other disciplining
31 authorities during the same time period as the pilot project;

32 (b) Compare the efficiency of each commission with respect to the
33 timeliness and personnel resources during the pilot project to the
34 efficiency of the commission prior to the pilot project and the
35 efficiency of other disciplining authorities during the same period as
36 the pilot project;

37 (c) Compare the budgetary activity of each commission during the

1 pilot project to the budgetary activity of the commission prior to the
2 pilot project and to the budgetary activity of other disciplining
3 authorities during the same period as the pilot project;

4 (d) Evaluate each commission's regulatory activities, including
5 timelines, consistency of decision making, and performance levels in
6 comparison to other disciplining authorities; and

7 (e) Review summaries of national research and data regarding
8 regulatory effectiveness and patient safety.

9 (4) The secretary shall employ staff that are hired and managed by
10 the executive director provided that nothing contained in this section
11 may be construed to alter any existing collective bargaining unit or
12 the provisions of any existing collective bargaining agreement.

13 NEW SECTION. **Sec. 30.** A new section is added to chapter 18.79 RCW
14 to read as follows:

15 (1) The commission shall conduct a pilot project to evaluate the
16 effect of granting the commission additional authority over budget
17 development, spending, and staffing. The pilot project shall begin on
18 July 1, 2008, and conclude on June 30, 2013.

19 (2) The pilot project shall include the following provisions:

20 (a) That the secretary shall employ an executive director that is:

21 (i) Hired by and serves at the pleasure of the commission;

22 (ii) Exempt from the provisions of the civil service law, chapter
23 41.06 RCW and whose salary is established by the commission in
24 accordance with RCW 43.03.028 and 42.17.370; and

25 (iii) Responsible for performing all administrative duties of the
26 commission, including preparing an annual budget, and any other duties
27 as delegated to the executive director by the commission;

28 (b) Consistent with the budgeting and accounting act:

29 (i) With regard to budget for the remainder of the 2007-2009
30 biennium, the commission has authority to spend the remaining funds
31 allocated with respect to advanced registered nurses, registered
32 nurses, and licensed practical nurses regulated under this chapter; and

33 (ii) Beginning with the 2009-2011 biennium, the commission is
34 responsible for proposing its own biennial budget which the secretary
35 must submit to the office of financial management;

36 (c) That, prior to adopting credentialing fees under RCW 43.70.250,

1 the secretary shall collaborate with the commission to determine the
2 appropriate fees necessary to support the activities of the commission;

3 (d) That, prior to the secretary exercising the secretary's
4 authority to adopt uniform rules and guidelines, or any other actions
5 that might impact the licensing or disciplinary authority of the
6 commission, the secretary shall first meet with the commission to
7 determine how those rules or guidelines, or changes to rules or
8 guidelines, might impact the commission's ability to effectively carry
9 out its statutory duties. If the commission, in consultation with the
10 secretary, determines that the proposed rules or guidelines, or changes
11 to existing rules or guidelines, will negatively impact the
12 commission's ability to effectively carry out its statutory duties,
13 then the individual commission shall collaborate with the secretary to
14 develop alternative solutions to mitigate the impacts. If an
15 alternative solution cannot be reached, the parties may resolve the
16 dispute through a mediator as set forth in (f) of this subsection;

17 (e) That the commission shall negotiate with the secretary to
18 develop performance-based expectations, including identification of key
19 performance measures. The performance expectations should focus on
20 consistent, timely regulation of health care professionals; and

21 (f) That in the event there is a disagreement between the
22 commission and the secretary, that is unable to be resolved through
23 negotiation, a representative of both parties shall agree on the
24 designation of a third party to mediate the dispute.

25 (3) By December 15, 2013, the secretary, the commission, and the
26 other commissions conducting similar pilot projects under sections 29,
27 31, and 32 of this act, shall report to the governor and the
28 legislature on the results of the pilot project. The report shall:

29 (a) Compare the effectiveness of licensing and disciplinary
30 activities of each commission during the pilot project with the
31 licensing and disciplinary activities of the commission prior to the
32 pilot project and the disciplinary activities of other disciplining
33 authorities during the same time period as the pilot project;

34 (b) Compare the efficiency of each commission with respect to the
35 timeliness and personnel resources during the pilot project to the
36 efficiency of the commission prior to the pilot project and the
37 efficiency of other disciplining authorities during the same period as
38 the pilot project;

1 (c) Compare the budgetary activity of each commission during the
2 pilot project to the budgetary activity of the commission prior to the
3 pilot project and to the budgetary activity of other disciplining
4 authorities during the same period as the pilot project;

5 (d) Evaluate each commission's regulatory activities, including
6 timelines, consistency of decision making, and performance levels in
7 comparison to other disciplining authorities; and

8 (e) Review summaries of national research and data regarding
9 regulatory effectiveness and patient safety.

10 (4) The secretary shall employ staff that are hired and managed by
11 the executive director provided that nothing contained in this section
12 may be construed to alter any existing collective bargaining unit or
13 the provisions of any existing collective bargaining agreement.

14 NEW SECTION. **Sec. 31.** A new section is added to chapter 18.25 RCW
15 to read as follows:

16 (1) The commission shall conduct a pilot project to evaluate the
17 effect of granting the commission additional authority over budget
18 development, spending, and staffing. The pilot project shall begin on
19 July 1, 2008, and conclude on June 30, 2013.

20 (2) The pilot project shall include the following provisions:

21 (a) That the secretary shall employ an executive director that is:

22 (i) Hired by and serves at the pleasure of the commission;

23 (ii) Exempt from the provisions of the civil service law, chapter
24 41.06 RCW and whose salary is established by the commission in
25 accordance with RCW 43.03.028 and 42.17.370; and

26 (iii) Responsible for performing all administrative duties of the
27 commission, including preparing an annual budget, and any other duties
28 as delegated to the executive director by the commission;

29 (b) Consistent with the budgeting and accounting act:

30 (i) With regard to budget for the remainder of the 2007-2009
31 biennium, the commission has authority to spend the remaining funds
32 allocated with respect to chiropractors licensed under this chapter;
33 and

34 (ii) Beginning with the 2009-2011 biennium, the commission is
35 responsible for proposing its own biennial budget which the secretary
36 must submit to the office of financial management;

1 (c) That, prior to adopting credentialing fees under RCW 43.70.250,
2 the secretary shall collaborate with the commission to determine the
3 appropriate fees necessary to support the activities of the commission;

4 (d) That, prior to the secretary exercising the secretary's
5 authority to adopt uniform rules and guidelines, or any other actions
6 that might impact the licensing or disciplinary authority of the
7 commission, the secretary shall first meet with the commission to
8 determine how those rules or guidelines, or changes to rules or
9 guidelines, might impact the commission's ability to effectively carry
10 out its statutory duties. If the commission, in consultation with the
11 secretary, determines that the proposed rules or guidelines, or changes
12 to existing rules or guidelines, will negatively impact the
13 commission's ability to effectively carry out its statutory duties,
14 then the individual commission shall collaborate with the secretary to
15 develop alternative solutions to mitigate the impacts. If an
16 alternative solution cannot be reached, the parties may resolve the
17 dispute through a mediator as set forth in (f) of this subsection;

18 (e) That the commission shall negotiate with the secretary to
19 develop performance-based expectations, including identification of key
20 performance measures. The performance expectations should focus on
21 consistent, timely regulation of health care professionals; and

22 (f) That in the event there is a disagreement between the
23 commission and the secretary, that is unable to be resolved through
24 negotiation, a representative of both parties shall agree on the
25 designation of a third party to mediate the dispute.

26 (3) By December 15, 2013, the secretary, the commission, and the
27 other commissions conducting similar pilot projects under sections 29,
28 30, and 32 of this act, shall report to the governor and the
29 legislature on the results of the pilot project. The report shall:

30 (a) Compare the effectiveness of licensing and disciplinary
31 activities of each commission during the pilot project with the
32 licensing and disciplinary activities of the commission prior to the
33 pilot project and the disciplinary activities of other disciplining
34 authorities during the same time period as the pilot project;

35 (b) Compare the efficiency of each commission with respect to the
36 timeliness and personnel resources during the pilot project to the
37 efficiency of the commission prior to the pilot project and the

1 efficiency of other disciplining authorities during the same period as
2 the pilot project;

3 (c) Compare the budgetary activity of each commission during the
4 pilot project to the budgetary activity of the commission prior to the
5 pilot project and to the budgetary activity of other disciplining
6 authorities during the same period as the pilot project;

7 (d) Evaluate each commission's regulatory activities, including
8 timelines, consistency of decision making, and performance levels in
9 comparison to other disciplining authorities; and

10 (e) Review summaries of national research and data regarding
11 regulatory effectiveness and patient safety.

12 (4) The secretary shall employ staff that are hired and managed by
13 the executive director provided that nothing contained in this section
14 may be construed to alter any existing collective bargaining unit or
15 the provisions of any existing collective bargaining agreement.

16 NEW SECTION. **Sec. 32.** A new section is added to chapter 18.32 RCW
17 to read as follows:

18 (1) The commission may conduct a pilot project to evaluate the
19 effect of granting the commission additional authority over budget
20 development, spending, and staffing. If the commission intends to
21 conduct a pilot project, it must provide a notice in writing to the
22 secretary by June 1, 2008. If the commission chooses to conduct a
23 pilot project, the pilot project shall begin on July 1, 2008, and
24 conclude on June 30, 2013.

25 (2) The pilot project shall include the following provisions:

26 (a) That the secretary shall employ an executive director that is:

27 (i) Hired by and serves at the pleasure of the commission;

28 (ii) Exempt from the provisions of the civil service law, chapter
29 41.06 RCW and whose salary is established by the commission in
30 accordance with RCW 43.03.028 and 42.17.370; and

31 (iii) Responsible for performing all administrative duties of the
32 commission, including preparing an annual budget, and any other duties
33 as delegated to the executive director by the commission;

34 (b) Consistent with the budgeting and accounting act:

35 (i) With regard to budget for the remainder of the 2007-2009
36 biennium, the commission has authority to spend the remaining funds

1 allocated with respect to its professions, dentists licensed under this
2 chapter and expanded function dental auxiliaries and dental assistants
3 regulated under chapter 18.260 RCW; and

4 (ii) Beginning with the 2009-2011 biennium, the commission is
5 responsible for proposing its own biennial budget which the secretary
6 must submit to the office of financial management;

7 (c) That, prior to adopting credentialing fees under RCW 43.70.250,
8 the secretary shall collaborate with the commission to determine the
9 appropriate fees necessary to support the activities of the commission;

10 (d) That, prior to the secretary exercising the secretary's
11 authority to adopt uniform rules and guidelines, or any other actions
12 that might impact the licensing or disciplinary authority of the
13 commission, the secretary shall first meet with the commission to
14 determine how those rules or guidelines, or changes to rules or
15 guidelines, might impact the commission's ability to effectively carry
16 out its statutory duties. If the commission, in consultation with the
17 secretary, determines that the proposed rules or guidelines, or changes
18 to existing rules or guidelines, will negatively impact the
19 commission's ability to effectively carry out its statutory duties,
20 then the individual commission shall collaborate with the secretary to
21 develop alternative solutions to mitigate the impacts. If an
22 alternative solution cannot be reached, the parties may resolve the
23 dispute through a mediator as set forth in (f) of this subsection;

24 (e) That the commission shall negotiate with the secretary to
25 develop performance-based expectations, including identification of key
26 performance measures. The performance expectations should focus on
27 consistent, timely regulation of health care professionals; and

28 (f) That in the event there is a disagreement between the
29 commission and the secretary, that is unable to be resolved through
30 negotiation, a representative of both parties shall agree on the
31 designation of a third party to mediate the dispute.

32 (3) By December 15, 2013, the secretary, the commission, and the
33 other commissions conducting similar pilot projects under sections 29
34 through 31 of this act, shall report to the governor and the
35 legislature on the results of the pilot project. The report shall:

36 (a) Compare the effectiveness of licensing and disciplinary
37 activities of each commission during the pilot project with the

1 licensing and disciplinary activities of the commission prior to the
2 pilot project and the disciplinary activities of other disciplining
3 authorities during the same time period as the pilot project;

4 (b) Compare the efficiency of each commission with respect to the
5 timeliness and personnel resources during the pilot project to the
6 efficiency of the commission prior to the pilot project and the
7 efficiency of other disciplining authorities during the same period as
8 the pilot project;

9 (c) Compare the budgetary activity of each commission during the
10 pilot project to the budgetary activity of the commission prior to the
11 pilot project and to the budgetary activity of other disciplining
12 authorities during the same period as the pilot project;

13 (d) Evaluate each commission's regulatory activities, including
14 timelines, consistency of decision making, and performance levels in
15 comparison to other disciplining authorities; and

16 (e) Review summaries of national research and data regarding
17 regulatory effectiveness and patient safety.

18 (4) The secretary shall employ staff that are hired and managed by
19 the executive director provided that nothing contained in this section
20 may be construed to alter any existing collective bargaining unit or
21 the provisions of any existing collective bargaining agreement.

22 **Sec. 33.** RCW 18.71.0191 and 1994 sp.s. c 9 s 326 are each amended
23 to read as follows:

24 Except as provided in section 29 of this act for the duration of
25 the pilot project, the secretary of the department of health shall
26 appoint, from a list of three names supplied by the commission, an
27 executive director who shall act to carry out the provisions of this
28 chapter. The secretary shall also employ such additional staff
29 including administrative assistants, investigators, and clerical staff
30 as are required to enable the commission to accomplish its duties and
31 responsibilities. The executive director is exempt from the provisions
32 of the civil service law, chapter 41.06 RCW, as now or hereafter
33 amended.

34 **Sec. 34.** RCW 18.79.130 and 1994 sp.s. c 9 s 413 are each amended
35 to read as follows:

36 Except as provided in section 30 of this act for the duration of

1 the pilot project, the secretary shall appoint, after consultation with
2 the commission, an executive director who shall act to carry out this
3 chapter. The secretary shall also employ such professional,
4 secretarial, clerical, and other assistants as may be necessary to
5 effectively administer this chapter. The secretary shall fix the
6 compensation and provide for travel expenses for the executive director
7 and all such employees, in accordance with RCW 43.03.050 and 43.03.060.

8 NEW SECTION. **Sec. 35.** Sections 33 and 34 of this act expire June
9 30, 2013.

10 NEW SECTION. **Sec. 36.** Section 17 of this act expires July 1,
11 2008.

12 NEW SECTION. **Sec. 37.** Section 18 of this act takes effect July 1,
13 2008.

14 NEW SECTION. **Sec. 38.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 39.** The code reviser is directed to put the
19 defined terms in RCW 18.130.020 in alphabetical order.

20 NEW SECTION. **Sec. 40.** Except for sections 2 and 18 of this act,
21 which take effect July 1, 2008, and for section 12 of this act, which
22 takes effect January 1, 2009, this act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately."

OUT OF ORDER 03/06/2008

1 On page 1, line 1 of the title, after "professions;" strike the
2 remainder of the title and insert "amending RCW 18.130.020, 18.130.050,
3 18.130.060, 18.130.080, 18.130.095, 18.130.170, 18.130.310, 70.41.210,
4 43.70.320, 18.130.140, 18.130.150, 18.130.165, 18.130.172, 18.130.180,
5 9.96A.020, 9.95.240, 43.43.825, 18.71.0191, and 18.79.130; reenacting
6 and amending RCW 18.130.160, 18.130.040, and 18.130.040; adding new
7 sections to chapter 18.130 RCW; adding a new section to chapter 42.52
8 RCW; adding a new section to chapter 18.71 RCW; adding a new section to
9 chapter 18.79 RCW; adding a new section to chapter 18.25 RCW; adding a
10 new section to chapter 18.32 RCW; creating new sections; prescribing
11 penalties; providing effective dates; providing expiration dates; and
12 declaring an emergency."

EFFECT:

Sec. 5.

Boards and commissions will review all cases initially and only transfer sexual misconduct cases to the secretary for review, which do not involve clinical expertise or standard of care issues.

Sec. 6.

The disciplining authority at the show cause hearing must establish that more probable than not, the license holder poses an immediate threat to the public health and safety.

Sec. 6.

The documentation to be considered at the show cause hearing is specified.

Sec. 7.

Clarifies that applicants whose background check reveals a criminal record will be notified, and that they can request a copy from the department.

Sec. 8.

Clarifies that employers of license holders must report to the disciplining authority when an employee's license has been terminated or restricted.

Sec. 9.

Clarifies that a presiding officer cannot make final decisions in cases involving clinical expertise.

Secs. 29,30,31,32.

Specifies performance measures that will be evaluated for each of the pilot projects.

Clarifies that staff are employed by the department of health, and that the executive director hires and manages them subject to existing collective bargaining units and agreements.

Sec. 32.

The dental quality assurance commission is not required to conduct a pilot project, but may do so.

Sec. 40.

The delayed effective date to apply the sanction schedule adopted under section 12 is realigned correctly. The delayed effective date does not apply to section 7 on background checks.

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